

### **REMARKS**

Claims 1-14, 16, 17 and 19-22 were pending in the Office Action. Upon entry of the present paper, claim 10 is canceled, and claims 9 and 11-12 are amended. No new matter is added.

In the Office Action, claims 1 and 12-14 were objected to for labeling informalities. The current listing addresses those labeling informalities<sup>1</sup>. The Office Action also requests identification of where new limitations in the claims, from the previous amendment, are supported in the specification. In response, Applicant offers the following non-limiting examples of support in the specification for the added features:

- Claim 1 – locational area features are described, for example, at page 9, line 29 to page 10, line 1; and page 10, lines 1-17, and steps s10-s14 and s8 in Fig. 3
- Claims 2-7 and 16 were amended simply to revise the wording/phrasing to an alternative format
- Claim 17 – different communication networks are described, for example, at page 7, line 31 to page 8, line 4; and in Fig. 5
- Claims 19 & 20 – the predetermined period of time is discussed, for example, at page 12, line 30 to page 13, line 8
- Claims 21 & 22 – the bandwidth features are described, for example, at page 14 line 32 to page 15, line 11

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<sup>1</sup> Applicant notes that claims 1-9 and 11-17 were previously amended in the Preliminary Amendment of April 11, 2005.

Turning now to the art-based rejections:

- Claims 1, 3 and 4 stand rejected under 35 U.S.C. 103(a) as being unpatentable over an alleged combination of Applicant's Admitted Prior Art (hereinafter "AAPA") and Sachs, et al (US Pub. 2006/0154603)
- Claims 2, 7 and 8 stand rejected under 35 U.S.C. 103(a) as being unpatentable over an alleged three-way combination of AAPA, Sachs, et al., and Chuah, et al. (US 6,515,994)
- Claim 5 stands rejected under U.S.C. 103(a) as being unpatentable over an alleged three-way combination of AAPA, Sachs, et al. and Chang, et al. (US 6,963,972)
- Claim 6 stands rejected under U.S.C. 103(a) as being unpatentable over an alleged three-way combination of AAPA, Sachs, et al, and Peterka, et al (US Pub 2002/0174366)
- Claims 9-11, 14 and 16 stand rejected under U.S.C. 103(a) as being unpatentable over an alleged combination of AAPA and Chuah, et al.
- Claim 12 stands rejected under U.S.C. 103(a) as being unpatentable over an alleged three-way combination of AAPA, Chuah, et al, and Chang, et al.
- Claim 13 stands rejected under U.S.C. 103(a) as being unpatentable over an alleged three-way combination of AAPA, Chuah and Peterka, et al.
- Claim 17 stands rejected under U.S.C. 103(a) as being unpatentable over an alleged three-way combination of AAPA, Sachs, et al, and Bhagavath, et al. (US 6,163,810)
- Claim 19 stands rejected under U.S.C. 103(a) as being unpatentable over an alleged three-way combination of AAPA, Chuah and Deng, et al. (US 6,208,647)

- Claim 20 stands rejected under U.S.C. 103(a) as being unpatentable over an alleged three-way combination of AAPA, Sachs et al. and Deng, et al.
- Claim 21 stands rejected under U.S.C. 103(a) as being unpatentable over an alleged three-way combination of AAPA, Chuah, et al, and Virgile, et al. (US 6,539,022)
- Claim 22 stands rejected under U.S.C. 103(a) as being unpatentable over an alleged three-way combination of AAPA, Sachs, et al, and Virgile, et al.

Applicant respectfully traverses these rejections, for the reasons articulated below.

**Independent Claim 1 and Dependent Claims 2-8, 20 and 22**

Independent claim 1 recites, among other features, the following (emphasis added):

d) determining whether the second host is situated within a locational area of the first host; and

e) if the second host is situated within the locational area of the first host, add the second host to the multicast delivery group, and cause the transmission of a remaining portion of the requested file to both first and second hosts after adding the second host to the multicast delivery group.

In rejecting claim 1, the Office admits that the primary reference, AAPA, fails to expressly show these features, but the Office presents two alternative arguments for these features anyway. Applicant respectfully disagrees with those alternative arguments.

In the first alternative argument, the Office reads these features on AAPA as well. Recall that AAPA is an alleged admission by the Applicant. In the disclosure, Applicant clearly states that “[h]owever, there are currently no provisions for allowing a host to join an ongoing file delivery transmission.” Page 3, lines 14-15. With such a clear statement, it is factually erroneous to contend, as the Office does, that Applicant has somehow admitted that the prior art shows “add[ing] the second host to the multicast delivery group, and caus[ing] the transmission

of a remaining portion of the requested file to both first and second hosts after adding the second host to the multicast delivery group,” as recited (emphasis added).

That is not the only deficiency with the first argument. The Office contends that the “locational area” is the entire radio access network (RAN). But when a second host requests the file, there is nothing in Applicant’s admission that suggests that the AAPA system would check to determine if the second host were in the RAN. Indeed, such a determination is unnecessary, since the host was obviously somewhere in the RAN – the request was received, after all. And as a final point on this first argument, Applicant’s admission in Fig. 1 does not identify any cell boundaries, or hosts in different cells, which further undercuts the Office’s position that Applicant has somehow admitted this feature to be in the prior art.

The Office’s second alternative argument is also deficient. In the second argument, the Office reads the “locational area” on the cell in Sachs et al., noting that Sachs et al. states that all of its receivers are in the same cell. Sachs et al., [0048]. The mere fact that Sachs et al. has receivers in a common cell does not show the recited steps (d) and (e). To the contrary, when a new receiver joins the point-to-multipoint (PTM) transmission, no such “determination” is made – the new receiver is simply added to the list. See Sachs et al., para [0077] (“When an additional receiver joins the PTM ARQ connection, the transmitter is informed about the additional receiver. The additional receiver is then included into the list of receivers ...”). Indeed, and as similarly discussed above with respect to AAPA, if the Sachs et al. base station/transmitter receives a request from the additional receiver to join, then the base station and receiver obviously are in communication, and it would be nonsensical for the Sachs et al. base station to make the recited determination.

For at least these reasons, Applicant submits that independent claim 1 distinguishes over AAPA and Sachs et al. The various other references are all cited for different features of dependent claims, and those references do not offer a modification to AAPA or Sachs et al. that would overcome the deficiencies identified above, so Applicant submits that independent claim 1 distinguishes over the applied references. Claims 2-8, 20 and 22 depend from claim 1, and are distinguishable for at least the same reasons as claim 1, and further in view of the various features described herein. For example, claim 2 recites “transmit the file via a first communication network and to receive the second request from the second host via a second communication network.” The Office relies on Chuah et al. to show this second network, citing col. 3, lines 46-57. However, that cited portion states that the transmissions are in a “single data connection spanning the router network,” and there is no teaching or suggestion of the request being received via a second communication network, as recited.

#### **Independent Claim 9 and Dependent Claims 11-19 and 21**

Amended independent claim 9 recites the following (emphasis added):

adding to the group any further hosts submitting requests for the file during said file delivery transmission whereby said further hosts receive remaining data packets in said file delivery transmission, wherein adding a further host to the group includes comparing a location of the further host with a location of the first host, and wherein the file is forwarded via a first communication network and the request from the first host is received via a second communication network

None of the applied references shows such a method with such features. For example, AAPA, Sachs et al. and Chuah, et al., all cited for multicast groups, do not compare location of a further host with a location of the first host when adding a member to the group, as recited. Additionally, Chuah et al. is cited for the “second communication network,” but as discussed above with respect to claim 2, Chuah et al. actually does not teach or suggest such a feature.

For at least these reasons, Applicant submits that amended independent claim 9 distinguishes over AAPA, Sachs et al. and Chuah et al. The remaining references were all cited for specific dependent claim features, and do not offer any modification that would overcome the deficiencies identified above with respect to AAPA, Sachs et al. and Chuah et al. Claims 11-19 and 21 depend from claim 9, and are distinguishable for at least the same reasons as claim 9, and further in view of the various features recited therein.

#### **Independent Claim 17**

Independent claim 17 recites, among other features, the following: “receiving, via a different communication network from said cellular telecommunication network, a start packet transmitted by the network element which configures a connection between the network element and the host.” The Office concedes that AAPA and Sachs et al. fail to show the recited start packet, but cites Bhagavath to address this deficiency. Applicant submits that Bhagavath is distinguishable.

Figure 3 of Bhagavath depicts a plurality of hosts 106, 108, 109, 110, multicast-unicast gateways 101, 102, 103, and a request server 107, each of which is connected to a network 105 such as the Internet. The description of Bhagavath does not include any mention of a second network. Bhagavath actually discloses the transmission of a request from a host 106, 108, 109, 110 to the request server 107 and a file delivery via selected multicast-unicast gateway 101, 102, 103 to the hosts 106, 107, 108, 109, 110 via the same network 105. Accordingly, Applicant submits that Bhagavath fails to overcome the admitted deficiencies in AAPA and Sachs et al., and that claim 17 distinguishes over the applied references.

#### **CONCLUSION**

Applicant submits that pending claims 1-9, 11-14, 16, 17 and 19-22 distinguish over the applied references, and are in condition for allowance. However, if the Examiner feels that additional discussion and/or amendment would be helpful, the Examiner is invited to telephone Applicant's undersigned representative at the number appearing below.

Respectfully submitted,  
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